



COMMONWEALTH of VIRGINIA
Office of the Attorney General
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MEMORANDUM

TO: BRIAN MCCORMICK
Regulatory Supervisor
Department of Medical Assistance Services

FROM: JENNIFER L. GOBBLE
Special Counsel to DMAS

DATE: January 14, 2010

SUBJECT: Fast Track Regulations to Amend Coverage of Legal Immigrant Children

I am in receipt of the attached fast-track regulations relating to the coverage of legal immigrant children. The regulations purport to move the statement of coverage of certain groups of legal immigrant children from state-only regulations to the State Plan for Medical Assistance. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services ("DMAS") has the legal authority to promulgate the regulation and if the regulation comports with state and federal law.

Based on that review, it is my view that the Director, acting on behalf of the Board of Medical Assistance Services pursuant to Va. Code §§ 32.1-324 and 325, has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority.

These regulations will permit the Commonwealth to claim Federal Financial Participation for covered services used by certain groups of eligible persons under the fast-track process. However, if an objection to the use of the fast-track process is received within the public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules,

DMAS shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process set out in Article 2 of the Administrative Process Act with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you have any questions or need additional information about these regulations, please contact me at 786-4905.

cc: Kim F. Piner
Chief/Senior Assistant Attorney General

Attachment